

REMARKS

1. In response to the Office Action mailed November 12, 2008, Applicant respectfully requests reconsideration. Claims 1-29 were last presented for examination. In the outstanding Office Action, claims 1-29 were rejected. By the foregoing Amendments, claims 1, 6-10, 12, 14-15, 17, 19, 21-22, 24 and 29 have been amended. No claims have been added. Claims 11 and 13 have been cancelled. No new matter has been added. Upon entry of this paper, claims 1-10, 12, and 14-29 will be pending in this application. Of these twenty-seven (27) claims, 5 claims (claims 1, 19, 21, 22 and 24) are independent.

2. Based upon the above Amendment and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Art of Record

3. Applicant acknowledges receipt of form PTO-892 listing additional references identified by the Examiner.

4. Applicant also thanks the Examiner for returning the PTO/SB/08 forms submitted by Applicant on December 3, 2004, which has been initialed by the Examiner indicating the Examiner has considered the references cited therein.

Priority Claim

5. Applicant notes with appreciation the Examiner's acknowledgement of foreign priority under 35 U.S.C. §119, and for acknowledging that certified copies of the priority documents have been received.

Claim Rejections under §112

6. Claim 29 is rejected under 35 U.S.C. 112 as lacking sufficient antecedent basis for the limitation "the hearing prosthesis". (See, Office Action, pg. 2.) Applicant has amended claim 29 above to overcome this rejection. Reconsideration and withdrawal of this rejection is requested.

Claim Rejections under §102(b) – Martens

7. Claims 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,858,280 to Martens *et al.* (hereinafter, “Martens”). Applicant submits that Applicant’s independent claims 19 and 21, as amended above, are not anticipated by Martens.

8. Martens is directed to a fastening clip for securing articles together, the clip being made up of a male part and a female part. (*See, Martens, Abstract; col. 2, ll. 18-19.*) The Martens device is said to be for temporarily securing “identification tags to articles prior to the authorized handling of such articles... [for example] in department stores and the like where the identification tag must be removed from the article purchased during the check-out process.” (*See, Martens, col. 1, ll. 7-19.*) The male part of the clip is a pin comprising a “pointed shank 14 and an enlarged head portion 16. The shank of the pin can be inserted through the articles to be inserted in and retained by the female section 10.” (*See, Martens, col. 2, ll. 22-25.*) Female section 10 is described as having a “cylindrical housing 22” and containing within it “a retainer [32]... loosely received within the housing.” (*See, Marten, col. 2, ll. 46-47.*) Martens continues, “a spring 48 is telescoped around the upper section 34 of the retainer, with one end of said spring contacting the underside of the retainer ring 30.” (*See, Martens, col. 2, ll. 62-65.*) Within the retainer are “*retaining balls 44 and 46*, which are loosely received in the bore 42 [of the retainer].” (*See, Martens, col. 2, ll. 56-57.*) In operation, Martens describes, “shank 14 of the pin 12 is inserted into the exposed end of the axial bore 40, *with the pointed end of the shank 14 of the pin... contacting the retaining balls 44 and 46*. Since the balls cannot move transversely in the wedged condition of the retainer 32, upon further penetration the pin will serve to raise the retainer 32 against the bias of the spring 48.” (*See, Martens, col. 3, ll. 7-16.*) “When the pin is released subsequent to the insertion process, the spring 48 will bias the retainer 32 downwardly whereby the retaining balls 44 and 46, frictionally engage the exterior surface of the shank 14 and the contiguous surfaces of the tapered wall 24 of the housing. The pin 12 is thus retained in the fastener section 10.” (*See, Martens col. 3, ll. 20-26.*)

9. In contrast, Applicant’s independent claims 19, as amended above, now recites:

An external component of a medical device, the external component comprising: a casing; at least one processor of said medical device disposed adjacent said casing; an engagement housing having disposed therein a plurality

of *non-spherical engagement members* and mounted to the casing; and an elongate member adapted to pass through at least a portion of an item of clothing and be received in the engagement housing and releasably engage with said engagement members; wherein the engagement of said elongate member and said engagement housing is releasable by an unlocking device.

(*See, Applicant's independent claim 19, as amended above; emphasis added.*)

10. Martens fails to anticipate independent claim 19, as amended above, particularly with respect to the claims limitations “*an external component of a medical device*, the external component comprising: a casing; *at least one processor of said medical device disposed adjacent said casing*; an engagement housing having disposed therein a plurality of *non-spherical engagement members*.” (*See, Applicant's independent claim 19, as amended above; emphasis added.*) Applicant therefore requests that the rejection be reconsidered and withdrawn.

11. Furthermore, in Martens, with reference to FIG. 6 of Martens, magnetic force is used by an unlocking device, whereby the retainer inside which the spheres are held is pulled away from the pin, such that the balls are no longer tightly, frictionally engaging the walls of the housing and the pin can be released. Martens states, “*retainer 32 is constructed entirely of magnetic material* such as steel or of a suitable material such as plastic impregnated with magnetic material, and is moved longitudinally in the fastener housing 22 to permit pin withdrawal by *generating a magnetic field* adjacent the housing for *attracting the magnetizable retainer*. By moving the retainer away from the end of the housing wherein the pin is retained, the pin can be withdrawn.” (*See, Martens, col. 4, ll. 48-60.*) The magnetic field is generated by an *electromagnet* 124 (or 125). (*See, Martens, col. 5, ll. 7-8.*) Martens further states that “*the magnetized retainer 32 is drawn toward the electromagnet thereby releasing the balls 46 and permitting withdrawal of the pin.*” (*See, Martens, col. 5, ll. 22-25.*) In other words, in embodiments where magnetic force is used to release the pin, an electromagnet 124 generates a magnetic field which acts upon the retainer, which is also magnetic, to pull the retainer towards the electromagnet 124 which allows the pin to be released.

12. In contrast, Applicant's independent claim 21, as amended above, now recites:

An external component of a medical device, the external component comprising: a casing; *at least one processor of said medical device disposed*

adjacent said casing; an elongate member having a disc and a pin member adapted to pass through at least a portion of an item of clothing; and a pin member engagement device having a *plurality of magnetic spheres* disposed in a circular arrangement *within a non-magnetic chamber*, the chamber having an inner wall, of which at least a portion is frusto-conical such that the chamber expands in diameter away from a front surface of the engagement device, the pin engagement device also having a spring acting and mounted between a rearward end of the chamber and a plate, the spring being adapted to urge the plate against the spheres within the chamber; wherein an orifice is formed in the engagement device to enable entry of the pin member into the chamber and thereafter frictionally engage with the plurality of spheres, the engagement of the pin being *releasable by a magnet acting on said plurality of magnetic spheres* and having a magnetic field of a strength sufficient to overcome the bias provided on the spheres by the spring and so cause the spheres to move rearwardly relative to the chamber.

(See, Applicant's independent claim 19, as amended above; emphasis added.)

13. Applicant asserts that Martens does not anticipate Applicant's independent claim 21, as amended above, and requests that the rejection be reconsidered and withdrawn.

Claim Rejections under §102(b) – Wilson

14. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,430,829 to Wilson, *et al.* (hereinafter, "Wilson"). Wilson is directed to a "detachable coin container which can be pinned" to clothing by a pin-clutch device. The coin purse is said to be especially beneficial for small children, where the device being secured to their clothing will reduce the incidence of loss during their play. (See, Wilson, col. 2, ll. 40-47.) In addition to providing a container in which can "serve as a coin purse and an identification badge", the Wilson device is described as having a "magnifying lens" which can be used to displayed by the magnifying front cover lens. (See, Wilson, col. 2, ll. 57-59.)

15. In contrast, Applicant's independent claim 22 is directed to "an *external component of a medical device*, the external component comprising... a casing; [and] *at least one processor of said medical device* disposed adjacent said casing." (See, Applicant's independent claim 22, amended above; emphasis added.) Therefore, Applicant asserts that Wilson fails to teach or suggest all of the claim limitations of independent claim 22, as amended above, and therefore

fails to anticipate Applicant's invention as claimed. Reconsideration and withdrawal of the rejection is respectfully requested.

Claim Rejections under §103(a) – Martens in view of Alleged AAPA

16. Claims 1 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martens in view of Applicant's allegedly admitted prior art. The Examiner states that Martens substantially describes Applicant's invention as previously claimed but *acknowledges that Martens “does not disclose that the article attachment device count be mountable to an external component of a hearing prosthesis.”* (See, Office Action, pg. 5.) The Examiner then alleges that “Applicant admitted prior art teaches that the external component of a hearing prosthesis (Fig. 1) is commonly attached to the clothing *using a clip 30* (Page 1, Paragraph 4). Therefore, it would be obvious... to mount any type of known clothing attachment device, such as the device disclosed by Martens, to the external component of a hearing prosthesis in order to secure the external component to the clothing of the user.” (See, Office Action, pg. 5.) Applicant respectfully disagrees because the Examiner is modifying Martens based on impermissible hindsight. Furthermore, even if properly modified, the suggested modified still would not have all limitations of Applicant's independent claims 1 and 24.

***The Proposed Combination of Durant and Leysieffer
is based on Impermissible Hindsight***

17. Applicant asserts that the combination of Martens based on Applicant's own disclosure is *prima facie* improper because the reasoning provided by the Examiner is based on impermissible hindsight. As stated in Section 2142 of the Manual of Patent Examining Procedure (M.P.E.P.), the “[E]xaminer must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made.” The Examiner must then examine the claimed invention and determine *whether the invention as a whole would have been obvious* to that hypothetical person. (See, M.P.E.P., §2142.) Although this is inherently an analysis based on hindsight, “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” (See, M.P.E.P., §2142.) The Examiner must consider only the prior

art, and *knowledge derived from Applicant's disclosure must be put aside* in reaching this determination. (See, *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).)

18. The portion of Applicant's specification cited above by the Examiner reads, "The external speech processor unit is typically *carried in a pouch or removably clipped* on the clothing, such as a belt, worn by the user using a clip." (See, Applicant's specification, pg. 1, paragraph 4.) The nature of this "removably clipped" external speech processor is explained further in subsequent portions of Applicant's specification. On page 2, paragraph 3 of Applicant's specification, Applicant states that "a problem with infants and even small children is that small *children are not aware... when the [speech processor] unit has become detached from their clothing*. Children are also naturally inquisitive and as they get older *they will often detach the speech processor unit from their clothing* to examine the unit or pass it among their friends... [It] is also not unknown for these children *to detach their external speech processor units and swap them* with those of their friends... Further, as children are typically active, it is not uncommon for their *external units to be dislodged during regular activity.*" (See, Applicant's specification, pg. 2, paragraph 3; emphasis added.)

19. Therefore, if a person of ordinary skill in the art were to be motivated by Applicant's discussion of an easily removable clip, they would presumably seek an easily removable clip which would have the convenience of being easily removed (even by children). Such a clip would have similar shortcomings from its being easily removed. A person having ordinary skill in the art would therefore *not* be motivated by the common use of easily removable clips, without the benefit of Applicant's specification and its disclosure of the present invention, to seek anything other than an easily removable clip. In a world where a skilled artisan knows only that easily removable clips are commonly used, as are pouches, to transport external speech processors of a hearing prosthesis, impermissible hindsight must be relied upon in order to provide motivation to that skilled artisan to seek out a reference which teaches a tightly securing, and not an easily removable clip, the external component to the recipient. Therefore, Applicant asserts that the Examiner has based the proposed combination on impermissible hindsight drawn directly from Applicant's disclosure. Accordingly, Applicant assert that the modification of Martens based on Applicant's specification is *prima facie* improper, and that the rejections under 35 U.S.C. §103 should be withdrawn.

***The Proposed Combination Still Fails to Contain
All Elements of Applicant's Claimed Invention***

20. As set forth in §2142 of the M.P.E.P., “to establish a *prima facie* case of obviousness... the prior art reference (or references when combined) must teach or suggest all of the claim limitations.” Applicant respectfully asserts that even if the references were combined as proposed by the Examiner, the resulting combination would still fail to teach all elements of Applicant’s claimed invention.

Claim 1

21. As explained in detail above, Martens is directed to a fastening clip in which spherical “balls 44 and 46” are described as engaging a pin member that is inserted between those “balls.” Whether in embodiments using an electromagnetic unlocking device or other type of unlocking device, the “balls” in Martens are the mechanism by which the pin is secured in Martens. In contrast, Applicant’s independent claim 1 as amended above recites, in part, “an engagement housing having disposed therein *a plurality of non-spherical engagement members collectively adapted to receive at least a portion of the elongate member* and releasably engage with said engagement members.” (See, Applicant’s claim 1, as amended above; emphasis added.) Since Martens does not teach “an engagement housing having disposed therein *a plurality of non-spherical engagement members* collectively adapted to receive at least a portion of the elongate member and releasably engage with said engagement members,” as claimed by Applicants, Applicants respectfully assert that independent claim 1 is in fact patentable over Martens, even if properly modified or combined based on Applicant’s specification. Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §103 be reconsidered, and that it be withdrawn.

Claim 24

22. With respect to Applicant’s independent claim 24, Applicant asserts that even if Martens is properly modified or combined with Applicant’s own specification, that the modified Martens device would still not have all of the limitations of Applicant’s claim 24, as amended above. Specifically, as amended above, independent claim 24 recites, in part, “An external component

of a medical device, the external component comprising... *at least one processor of said medical device disposed in said external device.*" (See, Applicant's independent claim 24, as amended above; emphasis added.) Accordingly, Applicant respectfully requests that the rejection of claim 24 under 35 U.S.C. §103 be reconsidered, and that it be withdrawn.

Dependent claims

23. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

Conclusion

24. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

25. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

Dated: May 12, 2009

Respectfully submitted,

Electronic signature: /Michael Verga/
Michael Verga
Registration No.: 39,410
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant